# Article - Labor and Employment

§3–904.

    (a)    An employer may not knowingly fail to properly classify an individual who performs work for remuneration paid by the employer.

    (b)    An employer has knowingly failed to properly classify an individual when:

        (1)    an employer–employee relationship exists as determined under § 3–903(c) of this subtitle; and

        (2)    the employer has knowingly failed to properly classify the individual as an employee.

    (c)    The Commissioner shall consider, as strong evidence that the employer did not knowingly fail to properly classify an individual, whether:

        (1)    before a complaint was filed against the employer or the Commissioner began an investigation of the employer, the employer:

            (i)    sought and obtained evidence that the individual:

                1.    is an exempt person; or

                2.    as an independent contractor:

                A.    withholds, reports, and remits payroll taxes on behalf of all individuals working for the independent contractor;

                B.    pays unemployment insurance taxes for all individuals working for the independent contractor; and

                C.    maintains workers' compensation insurance; and

            (ii)    provided to the exempt person or independent contractor a written notice as required by § 3–914 of this subtitle; or

        (2)    the employer:

(i) 1. classifies all workers who perform the same or substantially the same tasks for the employer as independent contractors; and

2. reports the income of the workers to the Internal Revenue Service as required by federal law; and

(ii) has received a determination from the Internal Revenue Service that the individual or a worker who performs the same or substantially the same task as the individual is an independent contractor.

(d) The Commissioner shall adopt regulations to provide guidance as to what constitutes the evidence relevant to the determination of whether an employer knowingly failed to properly classify an employee.